

BREAKFAST
TO THE
JUSTICES OF THE SUPREME COURT
OF THE
UNITED STATES.

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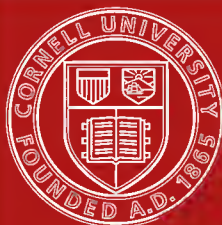
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John Jay —

BREAKFAST

TO THE

Justices of the Supreme Court

OF THE

United States,

IN THE

AMERICAN ACADEMY OF MUSIC,

SEPTEMBER 15, 1887,

BY THE

BAR OF PHILADELPHIA.

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BREAKFAST
TO THE
Justices of the Supreme Court
OF THE
UNITED STATES.

ON the 28th of June, 1887, a Committee of the Law Academy of Philadelphia, appointed at the instance of MR. J. GRANVILLE LEACH, sent a circular letter to many members of the bar of Philadelphia setting forth that they had been instructed to devise a method for the participation of the Academy in the celebration to be held in September in commemoration of the framing and promulgation of the Constitution of the United States; that it had been suggested "that not only the Junior but the Senior Bar as well might deem it expedient to take part in the proposed celebration;" and inviting a meeting in Room C, Court of Common Pleas, No. 2, on the 1st of July. At the time and place designated a number of representative lawyers assembled, and it was determined to invite the Justices of the Supreme Court of the

United States to a Breakfast, to be tendered them in the American Academy of Music on the 15th of September, at eleven A.M. The following Committee of Arrangements was appointed:

RICHARD C. McMURTRIE, *Chairman.*

SAMUEL W. PENNYPACKER, *Secretary.*

JOSEPH B. TOWNSEND, *Treasurer.*

R. L. ASHHURST.	VICTOR GUILLOU.
A. SIDNEY BIDDLE.	E. HUNN HANSON.
CHAS. CHAUNCEY BINNEY.	S. S. HOLLINGSWORTH.
GEO. T. BISPHAM.	HENRY M. HOYT.
JOHN W. BROCK.	J. GRANVILLE LEACH.
JOHN CADWALADER.	WM. M. MEREDITH.
HAMPTON L. CARSON.	JAMES OTTERSON.
LEWIS C. CASSIDY.	JOSEPH M. PILE.
RICHARD C. DALE.	ROBERT RALSTON.
GEORGE M. DALLAS.	WM. BROOKE RAWLE.
SAMUEL DICKSON.	DAVID W. SELLERS.
THOMAS J. DIEHL.	EDWARD SHIPPEN.
W. HEYWARD DRAYTON.	MAYER SULZBERGER.
ISAAC ELWELL.	JNO. K. VALENTINE.
GEO. HARRISON FISHER.	CHARLES F. WARWICK.
HENRY FLANDERS.	W. HERBERT WASHINGTON.
GEORGE S. GRAHAM.	WM. ROTCH WISTER.
A. HALLER GROSS.	

The Secretary wrote to the members of the bar inviting their aid, and saying, "The event to be commemorated was one of the gravest importance to all of the later generations of men. The convention called for the purpose did its work, which

was essentially legal, in Philadelphia. Its deliberations and conclusions were participated in by men who became conspicuous in the jurisprudence of our State. It is very fitting, therefore, that the lawyers of this city should show a proper appreciation of the occasion and of their relations to it by offering their hospitality to the members of the highest judicial tribunal of the country, who will be here to participate in the celebration."

The request met with an earnest response, and it became evident in a short time that the Breakfast would be of unusual interest.

The following distinguished persons accepted invitations to be present :

GUESTS.

Chief Justice MORRISON R. WAITE.

Justices SAMUEL F. MILLER.

JOHN M. HARLAN.

STANLEY MATTHEWS.

SAMUEL BLATCHFORD.

WILLIAM H. H. ALLEN, Justice of the Supreme Court of New Hampshire.

MICHAEL ARNOLD, Judge of the Court of Common Pleas, No. 4, Philadelphia.

WM. N. ASHMAN, Judge of the Orphans' Court, Philadelphia.

HUGH L. BOND, Judge of the United States District Court, Baltimore.

CHARLES J. BONAPARTE, of the Baltimore bar.

JAMES A. BEAVER, Governor of Pennsylvania.

WILLIAM BUTLER, Judge of the United States District Court, Philadelphia.

GEORGE A. BINGHAM, Justice of the Supreme Court of New Hampshire.

CRAIG BIDDLE, Judge of the Court of Common Pleas, No. 1, Philadelphia.

F. AMEDÉE BREGY, Judge of the Court of Common Pleas, No. 1, Philadelphia.

LEWIS W. CLARK, Justice of the Supreme Court of New Hampshire.

MONCURE D. CONWAY.

JOSEPH P. COMEGYS, Chief Justice of Delaware.

JOHN K. COWEN, of the Baltimore bar.

JOHN R. DOS PASSOS, of the New York bar.

D. NEWLIN FELL, Judge of the Court of Common Pleas, No. 2, Philadelphia.

THOMAS K. FINLETTER, President Judge of the Court of Common Pleas, No. 3, Philadelphia.

JOSEPH C. FERGUSON, Judge of the Orphans' Court, Philadelphia.

C. E. FENNER, Judge of the Supreme Court of Louisiana.

HENRY GREEN, Justice of the Supreme Court of Pennsylvania.

JAMES GAY GORDON, Judge of the Court of Common Pleas, No. 3, Philadelphia.

GEORGE GRAY, United States Senator from Delaware.

J. I. CLARK HARE, President Judge of the Court of Common Pleas, No. 2, Philadelphia.

WM. B. HANNA, President Judge of the Orphans' Court of Philadelphia.

DANIEL H. HASTINGS, Adjutant-General of Pennsylvania.

WILLIAM WIRT HENRY, of the bar of Richmond, Virginia.

ANTHONY HIGGINS, of the Wilmington bar.

GEORGE A. JENKS, Solicitor-General of the United States.

JOHN JAY, late United States Minister to Austria.

JOHN A. JAMESON, Judge of the Superior Court of Chicago.

ANTHONY Q. KEASBY, late United States District Attorney, New Jersey.

WILLIAM S. KIRKPATRICK, Attorney-General of Pennsylvania.

JAMES M. LEACH, ex-Member of Congress from North Carolina.

LOUIS E. McCOMAS, Member of Congress from Maryland.

JAMES T. MITCHELL, Judge of the Court of Common Pleas, No. 2, Philadelphia.

COURTLANDT PARKER, of the New Jersey bar.

EDWARD M. PAXSON, Justice of the Supreme Court of Pennsylvania.

HENRY REED, Judge of the Court of Common Pleas, No. 3, Philadelphia.

ALEXANDER RAMSEY, late United States Secretary of War.

ISAAC W. SMITH, Justice of the Supreme Court of New Hampshire.

JAMES P. STERRETT, Justice of the Supreme Court of Pennsylvania.

WILLIAM STRONG, late Justice of the Supreme Court of the United States.

J. RANDOLPH TUCKER, Member of Congress from Virginia.

M. RUSSELL THAYER, President Judge of the Court of Common Pleas, No. 4, Philadelphia.

J. ROSS THOMPSON, of the Erie bar.

JOHN SERGEANT WISE, Member of Congress from Virginia.

HENRY W. WILLIAMS, Justice of the Supreme Court of Pennsylvania.

ROBERT N. WILLSON, Judge of the Court of Common Pleas, No. 4, Philadelphia.

FRANCIS WHARTON, LL.D., of Washington, D. C.

LEONARD E. WALES, Judge of the United States District Court, Delaware.

The members of the Philadelphia bar who participated were:

ROBERT ALEXANDER.

PIERCE ARCHER.

R. L. ASHHURST.

GEO. W. BIDDLE.

AMOS BRIGGS.

W. H. BROWNE.

JAMES R. BOOTH.

JOHN C. BULLITT.

DIMNER BEEBER.

JOHN A. BURTON.

J. H. BURROUGHS.

LOUIS BREGY.

FRANCIS E. BREWSTER.

JOHN W. BROCK.

F. F. BRIGHTLY.

HENRY K. BOYER.

LEWIN W. BARRINGER.

ARTHUR M. BURTON.

GEO. T. BISPHAM.

F. CARROLL BREWSTER.

A. SIDNEY BIDDLE.

HAMPTON L. CARSON.

BRINTON COXE.

JAMES J. COMLY.

JOHN CADWALADER.

LUDOWIC C. CLEEMAN.

SAMUEL E. CAVIN.

F. DE WITT CUYLER.

GEO. L. CRAWFORD.

ALFRED FRANK CUSTIS.

JOSEPH L. CAVEN.

LEWIS C. CASSIDY.

HARRY G. CLAY.

FRANCIS S. CANTRELL.

JOHN B. COLAHAN.	B. F. HUGHES.
J. EDWARD CARPENTER.	THOMAS HART, JR.
THOMAS J. DIEHL.	HENRY M. HOYT.
THOMAS DIEHL.	JOHN HAMILTON.
EDWIN S. DIXON.	E. HUNN HANSON.
SAMUEL G. DIXON.	EDWARD HOPPER.
HENRY T. DECHERT.	CHARLES HOWSON.
HENRY M. DECHERT.	A. A. HIRST.
WILLIAM DRAYTON.	J. BAYARD HENRY.
W. HEYWARD DRAYTON.	JAMES H. HEVERIN.
SAMUEL DICKSON.	SAML. S. HOLLINGSWORTH.
RICHARD C. DALE.	SAML. B. HUEY.
GEO. H. EARLE, JR.	JOHN G. JOHNSON.
HENRY R. EDMUNDS.	HORATIO GATES JONES.
ISAAC ELWELL.	CHARLES HENRY JONES.
B. FRANKLIN FISHER.	W. H. JAMES.
GEO. HARRISON FISHER.	GEORGE JUNKIN.
HENRY FLANDERS.	WILLIAM F. JOHNSON.
LEONARD R. FLETCHER.	JAMES M. JEITLES.
JOSEPH C. FRALEY.	GEO. DE B. KEIM.
BENJAMIN D. GARDINER.	GEO. R. KAERCHER.
JOHN S. GERHARD.	WILLIAM W. KER.
ALLEN H. GANGEWER.	J. GRANVILLE LEACH.
VICTOR GUILLOU.	WILLIAM S. LANE.
GEO. S. GRAHAM.	FRANCIS D. LEWIS.
A. HALLER GROSS.	CHARLES A. LAGEN.
JOHN C. GRADY.	JOHN LAMBERT.
H. E. GARSED.	JAMES W. LATTI.
EZEKIEL HUNN, JR.	WILLIAM H. LEX.
HENRY HAZLEHURST.	ROBERT M. LOGAN.
ROBERT H. HINCKLEY.	LAWRENCE LEWIS, JR.
MORTON P. HENRY.	A. S. LETCHWORTH.
W. HORACE HEPBURN.	P. PEMBERTON MORRIS.

ROBERT D. MAXWELL.	JOHN J. RIDGWAY.
RICHARD C. MCMURTRIE.	JOHN ROBERTS.
WILLIAM M. MEREDITH.	WILLIAM H. RAWLE.
M. H. MESSCHERT.	GEO. I. RICHE.
N. DUBOIS MILLER.	GEO. P. RICH.
ALFRED MOORE.	AUGUSTUS J. RUDDEROW.
WILLIAM B. MANN.	JOSEPH R. RHOADS.
CHARLES N. MANN.	JOHN R. READ.
S. E. MEGARGEЕ.	ROBERT RALSTON.
C. E. MORGAN.	WILLIAM BROOKE RAWLE.
A. WILSON NORRIS.	EDWARD SHIPPEN.
ISAAC NORRIS.	JOHN M. SCOTT.
F. A. OSBOURN.	J. C. STILLWELL.
JAMES W. PAUL.	ELIAS P. SMITHERS.
WILLIAM S. PRICE.	E. S. SAYRES.
SAML. W. PENNYPACKER.	WALTER GEORGE SMITH.
FRANK P. PRICHARD.	RUFUS E. SHAPLEY.
C. STUART PATTERSON.	JACOB SNARE.
THEODORE C. PATTERSON.	JOHN T. SNARE.
ALBERT E. PETERSON.	JOHN SAMUEL.
G. C. PURVES.	E. COOPER SHAPLEY.
S. DAVIS PAGE.	A. LEWIS SMITH.
JOSEPH M. PILE.	ISAAC S. SHARP.
SAML. C. PERKINS.	J. D. SERGEANT.
JAMES PARSONS.	JAMES H. SHAKESPEARE.
GEO. PEIRCE.	ROBERT N. SIMPERS.
J. SERGEANT PRICE.	JACOB SINGER.
CHARLES E. PANCOAST.	LEWIS STOVER.
J. RODMAN PAUL.	MAYER SULZBERGER.
P. F. ROTHERMEL, JR.	A. S. L. SHIELDS.
ROBERT W. RYERSS.	WILLIAM H. STAAKE.
WILLIAM B. ROBINS.	JAMES C. SELLERS.
JOHN I. ROGERS.	FRANKLIN SWAYNE.

J. AUSTIN SPENCER.	SIDNEY F. TYLER.
USELMA C. SMITH.	SAMUEL G. THOMPSON.
JOHN SCOLLAY.	JOHN B. UHLE.
JOSEPH H. SHOEMAKER.	JOHN K. VALENTINE.
JOSEPH B. TOWNSEND.	WM. WHITE WILTBANK.
HENRY C. THOMPSON.	SAMUEL WAGNER.
JAMES P. TOWNSEND.	W. ROTCH WISTER.
HENRY C. TERRY.	CHARLES F. WARWICK.
M. HAMPTON TODD.	RICHARD P. WHITE.
JOSEPH L. TULL.	

At the hour named the bar and their guests—all of whom were present with the exception of Hon. J. R. Tucker and Mr. John R. Dos Passos, who were unexpectedly detained—assembled in the foyer of the Academy. The table and the hall were profusely and tastefully decorated with flowers and green, and back of the presiding officer hung suspended a shield, upon which was the figure of Justice with the scales evenly balanced, the whole wrought from the same attractive and fragrant materials. From the windows overlooking Broad Street could be seen under the most favorable circumstances the Industrial Procession as it slowly passed along.

The *menu* was folded in the form of a legal document, tied with red tape, and endorsed :

September Term, 1887.

High Court of the Constitutional
Centennial Celebration.

The Philadelphia Bar

vs

The Justices of the
Supreme Court of the
United States et al.

Bill of Particulars

Filed September 15th 1887.

PL

It contained, within, an original etching of Chief Justice JOHN MARSHALL and the following bill of fare :

Blue Points,

Sorbet au Kirsch.

CHABLIS

Terrapin.

Consommé,

JAUNAY SEC.

AMONTILLADO

Fresh Mushrooms.

Kennebec Salmon, Sauce Tartare.

GIESLER BLUE SEAL

SAUTERNE

Reed Birds.

Chicken Cutlets à la Soubise,

ROEDERER GRAND VIN SEC.

French Peas.

MUMM'S EXTRA DRY

CHATEAU LAFITTE

Lettuce.

Icee.

Fruits.

Coffee.





HE Chairman, R. C. McMURTRIE, Esq. (when the cloth had been removed and the hum of conversation had ceased), said,—

GENTLEMEN :—Eleven years ago there was a celebration in Philadelphia to commemorate the independence of the thirteen colonies,—an event which is, and always will be, I suppose, the most popular of all the events of our history. But the event of 1787 was one really more important, and one probably without which, in the minds of many persons, the event of 1776 would have been disastrous. From the controlling influence of one power, which was probably tyrannical, we would have fallen into dissensions among forty or more discordant powers on the continent, which would have been infinitely more injurious to the country than would have been the original form of government.

Under the Constitution of the United States, framed one hundred years ago, this country has grown from thirteen very insignificant colonies to be one of the great empires of the world. The main feature of that Constitution was the organizing of the colonies, if not into a nation, at least into

one government for certain purposes, chief among which was the establishment of a more perfect Union. Among the instrumentalities created by the Constitution for the furtherance of that end, that which has accomplished more than any other, and probably more than all the others together, is the court whose members have honored us with their presence here to-day.

A most remarkable feature of this court is its capacity of determining the limits of the power of the nation itself in its legislative functions; and this is a prerogative which is not possessed by a court of any other nation. All nations that have any conceptions of political liberty have confided to their judiciary the power of determining the limits of the executive functions, for without that there can be no restraint on executive power, and therefore no political liberty; but no nation other than our own has ever seen fit to confer upon a court of justice a power such as that conferred upon the Supreme Court of the United States.

While it would be probably improper, as it would certainly be impossible, for me on this occasion to go into any detailed statement on this subject, I will enumerate four conspicuous instances in which the Supreme Court has restrained the States composing the United States in the exercise of their powers, for the benefit of the community. An idea may thus be formed of the enormous debt of gratitude which this people owe to that court. The first instance was the decision of the

court in the case of the North River, where the State of New York claimed to possess the exclusive right of allowing the navigation of that river and of confining it to persons whom they saw fit to license to enter thereon. The second was the claim by a State which I will not name, but which lies across the territory of the nation, stretching substantially from ocean to ocean and cutting the nation in half, which arrogated to itself the right to prohibit the transportation of any merchandise or commodities from New York, New Jersey, and New England, on the one side, to the whole of the rest of the United States on the other, and *vice versa*, except on payment of a toll or tribute. The third was the claim of a State to enforce a like prohibition with reference to the passage of citizens of the United States from one part of the country to another, through that State. The fourth was a claim by the States, which has been made on so many occasions that they can hardly be enumerated, to compel the payment to them of a tax before a citizen of another State should be at liberty to buy or sell within their borders. Gentlemen, if you will but consider what would have been the consequences if the decisions in these instances had been the reverse of what they were and had affirmed the claims (and that it was quite possible that they should have been so is shown in the fact that the highest courts of the States by which such claims were made had uniformly decided in favor of them), you can better appreciate what would have been the character of

our Union and what the condition of this country. No citizen of one State could buy or sell in another State without paying a tax to that other State; no man could navigate a river which was within a State without a license from the State; and no man could travel, or pass his goods or property, from one part of the country to another except by paying a tax to each State successively through which passage was made. These subjects are appropriately recalled upon this occasion, particularly when we are favored, as we are to-day, with the presence of some of the members of this tribunal.

It is now my privilege to announce that the first toast—"The Supreme Court of the United States"—will be replied to by the Chief Justice of the court, HON. M. R. WAITE.





SPEECH OF CHIEF-JUSTICE WAITE.

GENTLEMEN:—In the name of my associates seated about me, and of the court of which I have the honor to be the head, I thank you for this cordial and kind reception, and I thank you, Mr. Chairman, for the remarks you have made, and which are so appropriate to the subject I have in hand.

I cannot think that this is either an improper time or an improper place to speak of what has come to be a very important matter in its effect upon the administration of justice by the government of the United States, and upon the usefulness and efficiency of the Supreme Court. The Constitution has limited the judicial power of the United States to cases arising under the Constitution and laws of the United States and treaties made under their authority; cases affecting ambassadors and other public ministers and consuls; cases of admiralty and maritime jurisdiction; controversies in which the United States shall be a party; controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the



M. R. Wail

same State claiming land under the grants of different States ; and between a State, or the citizens thereof, and foreign States, citizens, and subjects. This is all of it. This power is also vested by the Constitution in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish. I beg you to note this language: "ONE SUPREME COURT and such inferior courts as Congress MAY, FROM TIME TO TIME, ordain and establish." Not a Supreme Court or Supreme Courts, but "ONE," and ONLY ONE. This *one* Supreme Court Congress cannot abolish, neither can it create another. Upon this the Constitution has no doubtful meaning. There must be one, and but one. Certainly such a provision, in such pointed language, carries with it the strongest implication that when this court acts, it must act as an entirety, and that its judgments shall be the judgments of a court sitting judicially as one court and not as several courts.

The Constitution, in conferring judicial power on the United States, has also charged Congress with the corresponding duty of providing all such inferior courts as may be necessary for carrying that power into practical effect. As to the Supreme Court, the Constitution provides that in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, it shall have original jurisdiction, and in all others within the judicial power appellate jurisdiction, both as to law and fact, with such exceptions and

under such regulations as Congress may make. The original jurisdiction is thus fixed by the Constitution, and it cannot be taken away by Congress; but the appellate jurisdiction is subject entirely to its control. It may be more or it may be less, as the ever-changing circumstances of a great and growing country shall require. If at any time too large to admit of a prompt and satisfactory despatch of business, it may be reduced, and a part transferred to an inferior court with ample powers in that behalf. Of this there can be no doubt, and the grant of power to Congress to ordain and establish inferior courts *from time to time* implies that such courts are to be provided whenever and as often as the necessities of the country shall require.

The law which fixes at this time the appellate jurisdiction of the Supreme Court was enacted substantially in its present form at the first session of Congress, nearly one hundred years ago. With few exceptions, and these for all practical purposes unimportant to the point I wish to make, the jurisdiction remains to-day as it was at first, and consequently, with a population in the United States approaching sixty million people and a territory embracing nearly three million square miles, the Supreme Court has appellate jurisdiction in all of the classes of cases it had when the population was less than four million and the territory but little more than eight hundred thousand square miles. Under such circumstances it is not to be wondered at that the appeal docket of that court has increased

from one hundred cases, or perhaps a little more, a half-century ago, to nearly fourteen hundred, and that its business is now more than three years and a half behind,—that is to say, that cases entered now, when the term of 1887 is soon to begin, are not likely to be reached in their regular order for hearing until late in the term of 1890.

In the face of such facts, it cannot admit of a doubt that something should be done, and that at once, for relief against this oppressive wrong. In the past this has been spoken of as “relief for the Supreme Court,” but that is a most deceptive misnomer. No matter what changes are made in its jurisdiction, within any reasonable or probable limits, there will always be business enough for that court to do to keep it diligently at work to the full extent of its physical capacity. The difficulty will be not in keeping it fully employed, but in reducing its docket to such an extent that it may dispose of the work it is required to do with reasonable promptness and due deliberation. What is needed is relief for the people against the ruinous consequences of the tedious and oppressive delays which, as the law now stands, are necessarily attendant on the final disposition of very many of the suits in the courts of the United States because of the overcrowded and constantly increasing docket of the Supreme Court. It is the people that need relief, not the court, and the sooner this is felt by those on whom the responsibility rests of adapting the courts of the country to its judicial necessities,

the sooner will that work be done. It is not for me to say what this relief shall be, neither is this the time to consider it. My present end will be accomplished if the attention of the public is called to the subject and its importance urged in some appropriate way on Congress. What is required is a reduction of the present appellate jurisdiction of the Supreme Court, and if this is insisted upon it will be easy to find very many classes of cases which need not necessarily be taken to that court for final determination, and which can be disposed of with much less expense and quite as satisfactorily by some proper inferior court having the necessary jurisdiction for that purpose, and having sufficient character and dignity to meet the requirements of litigants. Such a court will not be the Supreme Court, but it will be the highest court of the United States which can, under the Constitution, be afforded for the hearing and determination of such causes. May I ask the bar of Philadelphia—so honorably here represented, and so honorable in the history of the nation—to do what it can in this behalf, and thus help to make the Supreme Court what its name implies, a powerful auxiliary in the administration of justice, and not what unfortunately with its present jurisdiction it now is, to too great an extent, an obstacle standing in the way of a speedy disposition of appealed cases. It is worthy of, and certainly was intended for, better things.



SECOND TOAST.

“The Constitution of 1787.”

Responded to by Hon. J. I. Clark Hare.

MR. CHAIRMAN :—In rising to respond to this toast, my thoughts, as is natural at my time of life, dwell on the past, and I recall the time when my father took me, as a boy of seven years old, to witness the welcome given by the city of Philadelphia to Lafayette, and told me how he in his childhood had witnessed the celebration of the ratification of the Constitution of the United States by Pennsylvania which assured the union of the American people as one nation; so brief is the period which divides the infancy of our country from its manhood. Descending the stream of time, my thoughts turn to the countless gathering, from all parts of the United States and from every quarter of the globe, which took place in this city in 1876 to commemorate an event that could not be so fitly celebrated in any other place. The meeting occurred in response to a call from Philadelphia, which seemed to many minds to involve responsibilities beyond her strength, and some of

her wisest citizens feared that she could not play the part of hostess to so many guests. Under the guidance of able men, among whom John Welsh stood conspicuous, the undertaking prospered beyond hope; it was sustained munificently by Philadelphia, the United States lent their aid, and the result was a superb exhibition, which following the heroic efforts of the civil war, enhanced the reputation of our country, by showing that we were also proficient in the arts of peace.

To-day the streets are again filled with the hum of eager expectation, the railroads are taxed to provide the means of transit, and we meet here to commemorate an event of equal grandeur, which has had a still more beneficial influence on the destiny of our country and of mankind. I need not say that I allude to the conception, framing, and ratification of the Constitution of the United States. It stands in relation to the Declaration of Independence as does the capital of the column to the shaft, and is a convincing proof that the American people were worthy of the freedom which they had so hardly won. The years which followed the successful issue of the Revolutionary war were clouded with an anxiety equal to that which prevailed while the struggle was going on. We were unable to maintain our credit abroad; at home, anarchy and intestine war seemed to be close at hand. Samuel Adams observed, "Better were it for America to have remained in bondage to England than, in shaking off the yoke, to have

disclosed that she was unable to govern herself." As you are all aware, delegates met in this city on the 14th of March, 1787, to remedy a state of things which filled every American heart with pain. Divided in counsels and in opinion, they were yet animated by a sincere desire to rescue their country from the dangers in which she was involved. Their deliberations were prolonged without relaxation through the heat of an American summer, and the result was a Constitution which gave peace, prosperity, and happiness to the American people. It passed unnoticed at the time in Europe, or was regarded as a mushroom growth, that would wither as quickly as it arose. It now attracts the respectful attention of the world, and is as earnestly studied in England, France, and Germany as at home. The causes for this change of opinion are not far to seek; confidence in the new government increased as successive generations found it still in being. It displayed a strength and elasticity, a capacity for growth and of adaptation to new and unforeseen contingencies, which are rare in history, and have generally been found wanting to written constitutions.

The mushroom has proved to be an oak. Its branches extend over half a continent, to either ocean, and give shelter to multitudes who regard it with affectionate reverence as a bulwark behind which they are secure from all the evils which government can obviate. Yet, if we look at the instrument which has led to these marvellous results,

which is the storehouse of all the powers that are requisite for the administration of the affairs of a great nation, which sanctions all that a government need perform, and forbids the excesses of arbitrary power, we shall find that it contains but five or six articles, which may be set forth in as many pages of ordinary type. It is this very brevity, this singleness of purpose and of utterance, which gives the strength and elasticity to which I have referred. Had the members of the convention defined instead of enumerating, had they descended to details instead of setting forth the ends for which Congress might exercise their powers, and leaving posterity to devise the means, the Constitution would never have been ratified, or would have been proved abortive within the space of a single generation. The members of the convention were careful to avoid so great an error. Among other qualities of statesmen they possessed the merit of knowing when they had done enough.

Now, gentlemen, I feel that I ought to take a lesson from my own remarks, and that I should close a disquisition which is in danger of becoming tedious. But there are two thoughts which I will crave your permission to present. One is, that if the American people were fortunate in their choice of the delegates who framed the government, the delegates were not less fortunate in the people for whom the Constitution was to be established. The institutions of a nation are chiefly valuable as they reflect the popular will; and the Constitution of the

United States was a faithful mirror of the wish of the national heart, which was that, while the government should be strong enough for all the purposes of national life and to promote the general welfare, each individual should in his private sphere be not less free to pursue happiness as he would ; to think as he would and speak as he would without being boycotted ; to labor as he would ; to set by the fruits of his toil and to enjoy them securely as his own. The American people had brought with them from the mother-country an experience which they had enlarged here, and were imbued with the principles and ideas which render the existence of a strong and central government compatible with local and individual freedom. It is owing to their intelligence and patriotism—exercised, it must be admitted, under very favorable conditions—that the Constitution has proved so great a success, and that we can look back, at the close of a century, and say “ Well done.” If they are still the same people as in 1776, and possess the qualities which they displayed during the trying period which preceded the ratification of the Constitution, the future is as secure as has been the past, and when a second centennial celebration shall be held, posterity may look back with the same satisfaction that we now experience in reviewing the last one hundred years.

With one other thought suggested by the occasion and by the presence of our distinguished guests I will close. The distinctive feature of the American Constitution is that it not only erects the Supreme

Court of the United States into a co-ordinate branch of the government, but renders it, in many respects, paramount. The people, the United States, and the several States are all sovereign, but none of them is absolute. All have limits which they may not overpass, and it is essential to the success and to the existence of our complex system that these bounds should be accurately defined. This difficult task was intrusted to the Supreme bench at Washington. Had that court been unequal to its exalted function, our government would have perished with the generation which gave it birth. Fortunately, the bench has been dignified by a series of accomplished jurists, and the line has come down to the present day. When we consider the numerous and intricate political questions which have been submitted for the determination of that tribunal, we must admit that they have been solved, in general, not merely with the acumen of the lawyer, but with the foresight of the statesman, and that public opinion and the subsequent course of events have borne out the judgment. To no part of our judicial history are these remarks more applicable than to the twenty years which have succeeded the close of the Civil War. I believe that every lawyer here present will join me in a tribute of respectful admiration for the services which the judges of the Supreme Court have rendered to political science, and, through it, to the cause of freedom in every quarter of the globe.



THIRD TOAST.

"The Supreme Court of Pennsylvania."

Responded to by Hon. Edward M. Paxson, Justice of
the Supreme Court of Pennsylvania.



R. CHAIRMAN AND GENTLEMEN OF
THE BAR:—The toast to which I have the
honor to respond is suggestive of several
lines of thought. I shall confine myself to one,
and that one I shall not elaborate. The little I
have to say has been reduced to writing in order
that I may not be misunderstood.

When our fathers founded this republic and
adopted the Constitution which is the subject of
our commemoration to-day, they builded wisely.
Its foundations went "far down through the shift-
ing sands until they rested upon the everlasting
rock of equal and impartial justice to all men."
They builded so well as to extort unlimited praise
from an eminent English statesman, whose pres-
ent words of cheer are in sharp contrast with his
utterances when he thought our political sun was
about to disappear forever. But the highest evi-
dence of the strength and wisdom of our Constitu-

tion consists in the fact that under its protection we are here, to-day, celebrating the one hundredth anniversary of its existence, after its having withstood the fiercest assault and the most terrible strain to which it was possible for brute force to subject it.

The general government is the great central sun of our political system. Around it the States—"Distinct as the billows yet one as the sea"—revolve in their beautiful orbits, as the planets revolve around the sun; held in their places by fixed laws which, if not violated by those whose duty it is to administer them, cannot fail to keep them in order for an indefinite period. The general government with its clearly defined and limited powers, the several States with their powers confined within the limits of their respective constitutions, form together a scheme of government which has no equal in ancient or modern history. And so long as they move in this harmonious manner, the general government performing only its appropriate duties, those which relate strictly to the highest degree of supremacy, and the States only exercising those functions which relate to local self-government, it is difficult to see any serious cause of disturbance in the future.

As before observed, our institutions have withstood the strain of force. But there are dangers more insidious than force, and perhaps more perilous. Standing here as the representative of the court of last resort of a great Commonwealth, in the presence of the judges of that august tribunal,

the Supreme Court of the United States, it has seemed to me a fitting time to call attention to what I regard as a hidden peril, a sunken rock, in the way of our political mariners. I allude to centralization; to the almost imperceptible but gradual absorption of the powers of the States by the general government.

The doctrine of State rights, as popularly understood, perished at Appomattox. The rights of the States, as recognized by our fathers and as defined in the organic law, exist to-day in full force, and were never of higher value.

The two forces which have threatened, and to some extent now threaten, our system of government may be said to be the centrifugal and the centripetal. The first took root early in our history. It was nursed and watered by its advocates until State after State left its orbit, leaving behind a trail of blood. After a time they returned and resumed their places in our political system. The countless number of green graves, scattered alike over the North and the South, are the mute witnesses of the rich sacrifices the country made to preserve its national life. The strain was upon every department of the government. It was felt equally in the executive, the legislative, and the judicial. It was perhaps natural, under such circumstances, that we should swing too far the other way and encounter the peril of the centripetal force. It is the more dangerous because, in its earlier stages, it is almost unseen and unfelt.

It needs but a glance at the sun in heaven to see what would be the result to our solar system were the laws which control it suspended. Our earth and the other planets would leave their accustomed orbits and be swallowed up in the fiery mass of the sun. As with the planets so with the States. So long as the law of their creation is observed, just so long will they continue in their beautiful course. But once let the centripetal force acquire sufficient power, and we shall have a gradual absorption of the rights of the States, a lessening of their orbits, until they finally disappear, perhaps in fire and blood, in the great and unwieldy mass of the general government.

I am no alarmist, and I draw no fancy picture. The centralization of which I speak is going on daily. It is being developed in every avenue of politics, trade, and business. Jefferson saw and deplored it; yet Jefferson in his day never dreamed of the possibilities of 1887.

We have now reached one of the great epochs of our history, the era of centralization. We see great corporations springing up, stronger than the people, which absorb to a great extent the business of the country, and, what is worse, aiming in some instances to control its political power. Even the profession of the law, which one would think would be exempt from it, does not escape. Centralization draws to it the business of even the professional man. The management of estates, the examination of titles, and other matters which I could mention,

are being gradually drawn into this vast whirlpool, into which only the favored few are admitted.

The people, in their easy good nature, are doing all they can to aid centralization. They confer vast powers upon corporations, and when those powers are directed against themselves, appeal to the Supreme Court to wrest them from those upon whom they have conferred them. This we cannot do. Powers once legally granted and legally exercised cannot be destroyed by judicial action. If they could be, we would sit as despots.

Power attracts power. It is perhaps natural that those who are clothed with it should seek to increase it. Hence we see in the action of Congress a constant tendency to narrow the jurisdiction of the State courts and increase that of the Federal courts, and to legislate upon matters affecting the States. Some of this legislation may have been thought necessary at the time by reason of the distracted condition of the country. No such reason exists now. The country is at peace. The writs of the United States courts run in every State in the Union. We all obey the orders and decrees of those courts, just as we expect our own orders and decrees to be obeyed in all matters touching the constitution and laws of our State and the rights and liberties of our citizens.

Mr. Chief Justice, you and your distinguished colleagues, with whose company we are honored to-day, have it in your power to do very much towards preserving intact the line of distinction be-

tween the Federal and State courts as marked out and defined by our fathers. You are the conservative element of the government. The lofty tableland upon which you stand is far above the atmosphere engendered by politics. The waves of popular clamor break harmlessly at your feet. The Supreme Court of the United States is the central sun of our judicial system. Your permanent position and conservative surroundings eminently fit you to preserve the nice distinctions of the Constitution. There never has been, and I trust there never will be, a serious conflict between the Federal and the State courts. It can best be prevented in the future by preserving the line that has always existed between them, and by rendering unto Cæsar the things only which belong to Cæsar.





FOURTH TOAST.

"The Origin of the Federal Union."

Responded to by Hon. W. S. Kirkpatrick, Attorney-General of Pennsylvania.

MR. CHAIRMAN AND GENTLEMEN OF THE PHILADELPHIA BAR:—It is with great diffidence that I rise to respond to the topic just suggested. I am impressed with the fact that I stand in the presence of members of that great court which has formulated a body of constitutional law the pride and glory of our country, which has adjusted the complexities of one of the most delicate pieces of political machinery ever devised by the wit of man, and which has administered the law of an empire more magnificent than the grandest domain of antiquity. It is, therefore, with great hesitation that, in this distinguished and learned company, I utter the few crude thoughts suggested by this subject.

It is eminently fitting on this anniversary occasion that, here in this historic city, and by the Philadelphia bar as participants in that celebration, attention should be called to the origin of

that Federal Union of which the Constitution is the embodiment and the expression. In Pennsylvania, within the limits of this very city, was made the first suggestion of the Federal Union almost as we have it now in its perfection and completeness. I do not allude to the hint of the great founder of this conservative Commonwealth, William Penn, which was made to the authorities in England when he recommended a plan of union in 1697, but to a period some few years later,—in 1722,—when a remarkable book was published which suggested, with great fulness, the scheme which was afterwards proposed and adopted at the Albany convention more than a quarter of a century later. I refer to the publication of Daniel Coxe, a citizen of Philadelphia, who, in the preface to his work on Carolina, in remarking, by the way, upon the dangers from French encroachments upon and interference with our western border and a probable invasion of the colonies (of which the colonists were in almost constant fear), proposed the very plan which was afterwards offered by that adopted son of Pennsylvania, Benjamin Franklin, as a basis of union in 1754 at Albany in the colony of New York. It was here, therefore, that the first seed was planted and watered from which sprang the giant stem, crowned with the bright consummate flower of the more perfect union under the Constitution, whose century of life we now celebrate.

But what I wish more particularly to suggest, in the imperfect way necessarily incident to an occasion

like this, is the thought that the Federal Union is not only a unique political conception, but the peculiar product of extraordinary conditions and forces. It is without precedent in history. Not only is it a departure from previously held political notions of a confederacy, but, etymologically, the phrase itself has undergone a transformation, its derivation being no longer the key to its meaning. The term "federal" cannot now in our political vocabulary be correctly applied to a mere confederation of independent States. It means something more. When we were a few obscure colonies clinging to the shores of the Atlantic, each isolated from the others, with almost impassable streams and forests between, and with their precious charters, which they hugged to their hearts, there was a natural unwillingness to impair or surrender those charter privileges which they held so dear for that which they imagined might prove a bane,—an enemy to that possession for which they had endured and suffered so much. So that the Federal Union was of slow and halting growth. But, nevertheless, it was necessarily, irresistibly evolved out of the peculiar and extraordinary conditions under which these colonies were planted and amid which they grew. We had it in the first feeble suggestions to which I have alluded; in the abortive attempts at consolidation in the early part of the eighteenth century; in the partial surrender of peculiar and special notions in the effort to compromise with the British power; and, finally, we

reached the culmination of the thought of the Federal Union, the conception of nationality as paramount to, and absorbent of, the individuality of the sovereign States voluntarily entering into the bond. Nowhere are we more forcibly struck by the truth of the Shakespearian thought, that "there's a divinity that shapes our ends, rough-hew them how we will," than in the history of the formation of the Federal Constitution and of the Federal Union of which that Constitution is the exponent and embodiment.

It must be remembered, Mr. Chairman, that there was something in the separation of the colonies from the parent State beyond a mere actual separation of the individual colonies. We separated from her as a *people*,—as a *united* people; and somewhere there had to be a depository of that sovereign power to which theretofore we had paid allegiance. It could not be resumed by the individual colonies, because they had never had it, and under their political philosophy they could find no place there for it. I refer to that imperial power which had been held by the Crown and which had to exist somewhere. It could not belong to Massachusetts, isolated and sitting by herself in the lonely and selfish individuality of integral sovereignty. It could not belong to Pennsylvania nor to Virginia. The logical outcome was that it had to reside somewhere; and that was where we have it now, in the unexampled idea of a Federal Union under the Constitution of 1787. Each colony could resume

its rights as a body politic; each colony could resume its sovereignty over itself; but the empire that was then in process of birth in the Western world could find no resting-place for its foot except in the Federal Union. So that when we read history superficially we imagine that there were almost insuperable difficulties to overcome, that the idea was in imminent peril, that the merest accident but saved us from the confusions and cross-purposes of a fortuitous collection of petty, fragmentary, and disconnected republics; but history read aright teaches, I say, that, under the superintendence of an overruling Providence, inexorable necessity created the Federal Union. But our fathers did not awaken to a full realization of the thought. They enshrined and worshipped their dear old charters. Connecticut, who had hid her precious charter in the old oak, loved it better than anything else in her narrow political life. And so it was with the rest of the States. And we cannot wonder at the fact. But with the Union made up of contiguous States, clasped together by bands of steel, as they are to-day, when rapidity of locomotion and intercommunication draws California closer to Pennsylvania than Massachusetts was drawn to Connecticut in the pre-Revolutionary times, when the abundant streams of wealth and trade course and pulsate through all the throbbing arteries of our giant country, when the outpouring populations of the older East are spreading over and fructifying with their intense and adventurous life the plains and mountain slopes

of the great West, and when an all-pervading Americanism characterizes the teeming millions of our limitless territory, the idea of the individual charter dwindles into utter insignificance when contrasted with the majestic thought of a federal national life as we have it under the Federal Union.

Mr. Chairman, the Federal Union grew out of these conditions and tendencies. The imperial power of the Crown found refuge at the place of the administration of national life at Washington; and it is now, after a century of experimental life, that we are entering upon a practical realization of the true idea involved in our political career as a nation,—not a nation considered as a mere confederative body, or one which is so often represented by the ancient, time-worn, astronomical figure of the sun and its planets with their perpetual war of antagonistic forces. Let me rather illustrate it, if I may be permitted to explore the domains of space for an illustration, by one of those beautiful stars which sweep over the field of the telescope, which, when resolved, are found to be systems in themselves, suns within suns, each with its glittering train of planets and satellites, and yet all blending their radiance into the splendor of a single matchless star decorating with its light and fire the diadem of the night.

Mr. Chairman, the gradual development of the Federal Union might be traced, if time were sufficient to go into detail, through our whole history, from the first feeble flutterings of political life in

the early colonial age, from the various tentative efforts made from time to time towards a closer bond, to the year 1887, which completes a century of national life. The Federal Union was not formed simply at the time of the promulgation of the Constitution; it was not formed simply when the Constitution was adopted by the original States and first put into operation. It was still in a state of development even up to and beyond the recent time which so fearfully tried and tested the work of our fathers, and which showed not only that they built wisely, but that they builded wiser than they knew. It is since then, and only to-day that the Federal Union has finally arrived at its period of complete formation after a century of experiment with its processes, and its power to bind and hold together its parts. We have now to face a new experiment in the century upon which it is entering. We have tried the experiment of a combination of political entities into a complete harmonious whole, and the power of that whole to curb and control the repulsive energies of its parts; and only after passing through bloody seas, only after undergoing "the pangs of transformation beneath the furnace blasts" of our great and unexampled Civil War, did we learn the intrinsic strength of the great work whose rivets were made and fastened in 1787. Recognizing, as we must, the fact that under the ministrations of that great and august court whose members are your guests to-day there has been an evolution, and a revolution

too, in the political thought of this century in the final building up of the national idea, we must now enter upon another warfare of a century, perhaps, to test the power of national life through the organism that we have inherited from our fathers of 1787, and since have so slowly and laboriously perfected. We are to deal now with other rebellious forces and new disturbing influences. We are no longer separate communities, but are bound together by ligaments of steel,—and what God has joined together the unholy weapons of internecine war or wicked state-craft cannot put asunder. The American with his precious share in the great inheritance is equally within the encircling power of an indestructible imperial sovereignty, whether he clings to the homestead of his fathers in old Massachusetts, or roams “where rolls the Oregon,” or wanders amid the bleak and rocky fastnesses of remote Alaska. We must now test this national power in subduing those subtler agencies which we find, in our higher civilization, attacking the foundations of states and governments. We must now contend with the disintegrating forces which we find within ourselves, and determine whether that same idea of national power, which was at first barely hinted at and which finally grew into complete and rounded thought, is sufficient to deal, under the forms of law, with the dissolving elements which we find in modern civilization, with a tendency to overthrow all government, all order, and all social system. It is to these responsibilities, it seems to me, that the best energies of American

citizenship should be directed ; it is in dealing with these perils that the highest wisdom is required, not only on the part of the individual citizen as he exercises his political privileges, but on the part of our governmental organization, particularly in our courts,—which are the great breakwater against floods which, but for them, might overwhelm us.

Imbued with this spirit, and exorcising the ancient phantoms of centralization and State sovereignty,—for they are now but meaningless terms, the vanishing shadows of a fast receding past (for all practical purposes of internal police and local government under the most extreme national view the States have a sufficiently separate and independent existence, which can never be encroached upon),—casting aside ideas of danger from those sources as puerile and unworthy of our better statesmanship, let our higher energies be directed to the impending struggle with these new and more dangerous forces which tend to sap the vitality of modern civilized life. Having fully comprehended the true principle involved in the administration of our government, having at last come to a full recognition of the imperial thought which, like a human soul, pervades and glows in every article of our Federal charter, I think we may safely anticipate that, as the orb of the new century rises above the horizon, there will dawn the sure promise of a brighter and more beautiful light, which shall irradiate the giant lineaments of our country as the sunlight spreads over the mountains.



FIFTH TOAST.

“The American Lawyer.”

THE CHAIRMAN:—In calling upon the gentleman who has kindly consented to respond to the toast, “The American Lawyer,” I will recall the name of one of the worthiest and most respected citizens of this city, whom some of us here are old enough to remember,—Mr. John Sergeant. I would mention, as an evidence of the consideration in which he was held here, that he was sent to Congress by the nominations and votes of both parties at the same time. The gentleman who will respond is his grandson, the Hon. John Sergeant Wise, of Virginia.

SPEECH OF MR. WISE, OF VIRGINIA.

MR. CHAIRMAN AND GENTLEMEN OF THE BAR:—In the course of a somewhat crowded and episodical life I have had many surprises. While yet a boy, and filled with the boyish ardor which prefers surprise to inactivity, I have been snatched from sweet slumber by the rattling drums and hurried

to meet sudden emergency. In the more sedate period of manhood I have seen the sudden point arise in an important cause when least expected and become the all-absorbing question, requiring the best of mental energies to crystallize the facts and "catch them living as they rose." I have been drenched with cold water from an unseen hand while walking down a crowded street with my best hat and suit. I have been in my day in railroad accidents where they were least expected; fired upon from ambush in a quiet road, and otherwise shaken up considerably by surprises of one sort and another. But I am frank to say that reviewing all these experiences, I have never encountered a situation more sudden than this, or had made upon me a demand which caused me more of trepidation and misgiving as to my capacity to fill it.

I entered the banquet hall as an humble member of our splendid profession, with no feeling that I had a right to be selected or expectation that I would be chosen as a representative lawyer to speak for the American bar. I came, my brethren, with a sort of truant feeling, and grateful that you still permitted me to mingle with you unpretentiously; because I still remember the maxim of my old professor, that the law is a jealous mistress who will tolerate no toying with other loves, and demands the sole and entire worship of her devotees, and I confess that in my blood and brain there has always been, much as I love the law, a

yearning I could never suppress for political life, that has more or less diverted my attention from that strict pursuit of the profession of law which it is claimed can alone produce the great and fully-equipped lawyer.

I came also with the assurance that your managers had wisely chosen a most distinguished gentleman of national reputation as a lawyer to respond for the "American lawyer," and filled with pleasant anticipations of the intellectual treat in store for us from the lips of that representative of the great State of Maryland which has furnished the legal world with names like Pinkney, Luther Martin, and Reverdy Johnson.

But quick as the flash of electricity all this has changed. In the midst of delightful and unconventional social enjoyment, nay, even after the first courses of your most charming banquet, you have summoned me, all unprepared, to respond to this sentiment, and thrown over me the mantle of another, without giving me any warning or time to prepare for execution.

Contemplating that mantle, which is by far too large, and by its ample folds and creases shows the misfit so plainly, I am reminded of an anecdote the point of which you will doubtless see when I shall have finished the few desultory remarks I have been able to conjure up.

In his Memoirs General Grant tells the story that when the Confederate Peace Commissioners visited his camp in February, 1865, Alexander H.

Stephens first appeared to him to be a man of moderate size. It was a great surprise to him, as he had heard much of his diminutive stature. They retired to a steamer, where in the warm saloon Mr. Stephens proceeded to divest himself of an immense overcoat of Confederate manufacture and of a thickness Grant had never witnessed. Without his overcoat, Grant quickly saw how small a man he was. A few days later, and after the Commissioners had visited the President at Fortress Monroe, Mr. Lincoln visited Grant. Soon after they met Lincoln said to Grant, "Did you see Stephens?" "Yes." "Did you see that overcoat?" "Yes." "Well, in all your life did you ever see as big a shuck to as small a nubbin?"

But, in all seriousness, I know you will pardon me, and not attribute it to silly affectation or unwillingness to do what I can, but to a genuine feeling that I could not do justice on such short notice and under the circumstances to you or to my subject, that I hesitated long and yielded reluctantly to a demand so full of responsibility.

Brethren of the American bar, think but a moment of where we are; think of the presence in which we stand; think of the theme on which you ask me to speak. We are in historic Philadelphia, the cradle and nursing-place of all constitutional liberty and of all the great thoughts which have made the "American lawyer" a possibility. We are in the presence of the honored chief and associate members of a tribunal created here, which, although

less than a century old, has attracted the attention and commands the admiration of all the crowned potentates of the oldest civilized governments of earth. We are the assembled American guild, which, while we say we have no aristocracy, represents the proudest aristocracy of earth, the aristocracy of American intellect. And here amidst these historic scenes, here in this august presence, here in the midst of this brilliant galaxy of American lawyers, I consent to speak for the "American lawyer," feeling that cold indeed must be the heart, dull indeed must be the intellect, palsied and hesitating indeed must be the tongue that fails their possessor on such an occasion, amid such surroundings, and with such a theme to warm and throb and sing a song of triumph worthy of this day.

Around us and about us lies the good old city of Brotherly Love, whose many-syllabled name has driven it out of the possibilities in poetic writing, and yet whose history and associations have made the simple name of Philadelphia at once a poem and a sermon. Here, at its birthplace, we assemble to commemorate the formation of a Constitution which throughout the civilized globe has excited praise from all lovers of liberty, and which even among tyrants and despots, who hate its every teaching, has forced the tribute of praise and homage to the giant intellects by which it was conceived and framed. Here, also, stand we, the guardians of that great department which, in the complex system of the Constitution, is made the balance-

wheel of our government, offering profound thanks that amidst all the strains to which that Constitution has been subjected, and in spite of all the gloomy predictions of failure in the past, the Constitution is preserved, and our people yet enjoy the blessings of constitutional liberty, and testifying that for that preservation and for those blessings the American people are even more indebted to the wisdom, the eloquence, the intellect of the "American lawyer" than to the brute force of the American soldier. If this were the proper occasion, it would be most interesting to trace the evolution of the American lawyer within the century ago. We might picture him as he was, the old "Jack-of-all-trades" lawyer of Revolutionary days, carrying his papers in his saddle-bags and his law in his head, practising in all courts and in any sort of cases, from the committing magistrate to the Court of Appeals, from the trial of a warrant before a justice to a will-case in the Supreme Court. We might portray him then and there, with strong and rugged intellect, confronting in rough roll-and-tumble way the new and knotty problems of our early jurisprudence, and making the laws as he went along. We might trace the history of our jurisprudence down through all its stages, and at each step find something of interest and instruction, something new, something wonderful, until we come down to this moment, which beholds our system fairly founded, ably expounded, almost thoroughly construed, and our profession distrib-

uted among specialties in such a way that the American lawyer of to-day, each devoting himself to his specialty, and bristling with authorities, bears no more resemblance to his progenitor of a century ago than does the university graduate to the boy in the backwoods school.

And yet, my brethren, do not understand me as belittling the intellect or power of the American lawyer of the past. He had not the educational facilities or opportunities that belong to us. But in rugged intellect, in massive power of thought, in pioneer pluck of investigation and solution, he was the peer, if not the superior, of the clearest and best-equipped intellects we have. He made laws where precedents were lacking, and we are leaving as precedents what he originated with an intellectual power and vigor well worthy of our emulation. It was the intellect and foresight of the American lawyer which discovered when the Constitution of our fathers was framed, and when the struggle for our liberty came on, that while we had the soldiers to gain our liberty and the statesmen to formulate our plan of government, it was, above all, necessary to select a supreme arbiter to construe the chart of our liberties. For the Constitution as framed was by no means perfect, by no means intelligible in all its parts. Not only were entirely new problems of government formulated which remained to be tested, but controversies were left open, disputed questions were left undecided, even at the date of its adoption. We en-

tered upon a career which at best was but an experiment. Jealousies existed which jeopardized the formation of this government to that extent that we had to have evasion and suppression in the formation of our chart of government. We had the soldiers, we had the statesmen; it remained to be seen whether we had the lawyers. It is a common thing to say that we had the whole code and body of the English jurisprudence handed down to us, and yet, think for a moment of what was new and untried in all we did. We had a Constitution without precedent. From the ancient republics, so fully discussed in the *Federalist*, there was nothing, you may say, to guide us in the interpretation of our chart. In the language of Hamilton, they but showed us "the history of conflicting interests" which made their defective forms vibrate between the extremes of anarchy and tyranny. All that was given to us was but an experiment. The years rolled on; jealousies increased; conflicts came; blood was shed; the restoration came at last; and then, above all others, was felt the power of the American lawyer, speaking above the tumult of passion, and still pleading for constitutional liberty. The victors claimed more than they had won, the vanquished dared not claim what was legitimately left to them. Through all the years of this excitement there was left to us only the capstone of American liberty, the Supreme Court of the United States, a tribunal still unswerved by the excitement, still holding the balance evenly.

I said that we owed more to the American lawyer than to the American soldier, and I repeat it; for not all the victories of Grant, or all the marches of Sherman, have by brute force done as much to bulwark this people with the inestimable blessings of constitutional liberty as that one decision of the Supreme Court in the Slaughter House cases, declaring what of their ancient liberties remained. That decision, worthy to live through all time for its masterly exposition of what the war did and did not accomplish, did more than all the battles of the Union to bring order out of chaos.

War blasted and hurled in wild confusion the material. The Judiciary, with its master-workmen of American lawyers, stepped down into the quarry, squared the ragged stone that war had left, fitted the shattered fragments with deft and cunning hand, and built afresh, and stronger than before, the shattered temple of constitutional liberty. That voice, not strong like the trumpet's blast, or the shout of warriors; not thunderous like battering cannon, but clear as the sounds which come to us in the quiet eventide, and wise and firm in every utterance until it seemed almost divine, brought with it a hush to the tumult of a nation; consideration to the knotted brow of angry victory; balm to the hurt minds of downcast defeat; and peace to all the people who still enjoy its blessings.

Such is the triumph of the American lawyer. Such is the good work of the Judiciary Department, and to it we owe it that we are what we are

to-day. For all the State sovereignty which we enjoy we are indebted to a creature of the Federal Constitution,—the Supreme Court of the United States.

And yet, my learned friend, the distinguished representative of Pennsylvania (Justice Paxson), appearing in a new rôle for him, has expressed to us the fear that our present danger is from a tendency towards centralization. Oh, my friend, you are about thirty years too late in your apprehension. Why, in all America, who enjoys the most of State sovereignty? Is it South Carolina, with her jealousy of Federal power? Is it Virginia, dragged against her will into the heresies of dissolution? No. It is Pennsylvania and Massachusetts, that have always conceded the just demand of Federal power and lived in no morbid apprehension of encroachment. Was it bloody secession that stayed the hand of Federal power? Was it disunion that brought the remedy for encroachment? No. When war had ceased, when blood was stanchèd, when the victor stood above his vanquished foe with drawn sword, the Supreme Court of this nation, when it spoke in the great decision of the Slaughter House cases, planted its foot and said, "This victory is not an annihilation of State sovereignty, but a just interpretation of Federal power."

"Peace," therefore, "hath her victories no less renowned than war." It has taken a full century to work out the great problem, but it has been solved at last. Great have been the changes. Men

have been born, grown old, and died while these great results have still lived, and the problem of our national life was still an experiment, and angry contention left it still in doubt whether we should live or die.

The little village, first the prey of the British and then the prize of colonists, now old Philadelphia, the nurse of the Constitution, the mother of all the liberty we enjoy, has grown until she spreads over countless miles and her populace numbers millions. The little nation that numbered but a few millions now mounts into the fifty or sixty millions. The jealousies of Federal power that brought on war and bloodshed have passed away. Out of clouds and darkness a reunited nation has sailed forth into the summer's sea of peace, and national happiness and constitutional liberty seem at last assured. If I were asked to-day who brought about this equal balanced result more than another, would I say the soldier with the musket in his hand? Shall I attribute it to force of armed men? No. Was it the angry politician with his sophistries just plausible enough to satisfy his partisans? No. Were I called upon to tell who it was, like the dove to his cote my mind would fly, and I would say that amidst all this complex machinery, amidst all the passions of the times, but one of our departments has held aloft at all times the even-balanced scales of justice. That department, the creature of Federal power, has ever, in peace and in war, while asserting the just rights of this government, de-

clared, "So far shalt thou go, no farther; we are a complex system, a nation composed of so many States with certain rights, no more, no less."

It has said that, while the power of this government may crush out every heresy which denies its just supremacy, that power, when it transcends its constitutional limits, is tyranny. Look about you, fellow-members of the bar, look around you and see what other power you respect like that. See what other department there is in this land which compares with it in the distinct character of its delegated powers, in the finality of its decisions, in the immutable authority which is intrusted to it. There is none. When accepting the invitation to come here, expecting to come as an humble listener and in no other capacity, I remarked that I felt honored in attending a banquet given to the highest tribunal on earth. When you speak of the American bar, think of the width and the depth of the influence exerted by that power. Think of the power of this tribunal created from our midst, and which each day gives forth the law to sixty million people,—I will not say as immutable law, because law is described as a garden in which that which to-day is a flower to-morrow becomes a weed, and is dug up to give place to the new product of the changing necessities of the present. Yet it is a tribunal beyond the caprice of politicians, beyond the changes of administration, beyond the fluctuating supremacy of parties,—a tribunal standing respected by men of all shades of opinion in every

section of our land, and permanent, unchangeable in its membership and constitution as is no other department of our government. May we, the American lawyers, not feel justly proud of such a body whose members are selected from our midst? May we not feel justly honored that we are the trusted servants of that tribunal?

To-day there marches beneath these windows the boasted power of American labor. Far be it from me to decry or to belittle it. Agriculture is the foundation of American thrift, of American liberty, of American prosperity. Labor is the splendid column of our temple. But the American bar is the Corinthian capital which surmounts the pillars upholding our civilization.

A word more and I have done, for I have too long trespassed upon your kindness. I see behind our honored Chief Justice a floral emblem representing the scales of justice hanging evenly. I am no artist, and until to-day I dared not call myself a representative lawyer, because I have unfortunately been so constituted as to vibrate between the cross-road politician and the Supreme Court advocate; and yet, had I been called upon to model that design, I would present it differently. Its background is of dull, uncertain hue, and the scales of justice are filled with colored flowers. To me it seems that its background should have been filled with the varied tints of our choicest conservatories to typify the diversity of talent, the brilliancy, the wit, the eloquence, of the American lawyer. The

scales of justice I would have filled with immortelles to typify the pure white flower of the blameless life and spotless purity of our Supreme Tribunal, the Supreme Court of the United States.





SOME LETTERS OF REGRET.

EXECUTIVE MANSION, WASHINGTON.

THE President has received the invitation of the Philadelphia bar to be present at a *Déjeûner* tendered the justices of the Supreme Court of the United States, Thursday, September 15, at eleven o'clock, and regrets that his engagements will not permit of his presence in that city at an hour sufficiently early to accept it.

Tuesday, September 13, 1887.

MR. JUSTICE GRAY greatly regrets that other engagements make it impossible for him to accept the courteous invitation of the Philadelphia bar to breakfast with them on the 15th of September.

BOSTON, September 1.

JUSTICE BRADLEY regrets that he will not be able to attend the *Déjeûner* to be given to the justices of the Supreme Court on the 15th instant by the Philadelphia bar.

STOUX, VERMONT, September 1, 1887.

LITTLE ROCK, ARKANSAS, September 5, 1887.

DEAR SIR,—I am in receipt of the invitation to be present on the 15th instant at a *Déjeûner* tendered to the justices of the Supreme Court of the United States at Philadelphia by the bar of that city, and I am sincerely obliged for the same.

It finds me out at my rural retreat for my September vacation, and according to my plan, already fixed, that will not close till the end of the month.

It would afford me no little pleasure to be able to join in this mark of respect to those gentlemen, for whom as officials I have the utmost regard and confidence, and for whom personally I have the kindest feelings of sincere friendship.

Trusting you may have a most excellent *constitutional* good time, I am,

With high regards,

A. H. GARLAND.

MR. SAMUEL W. PENNYPACKER,
209 South Sixth Street, Philadelphia.

STOCKBRIDGE, MASSACHUSETTS, 9th September, 1887.

SAMUEL W. PENNYPACKER, ESQ.

DEAR SIR,—I regret very much to be obliged to decline the polite invitation of the Philadelphia bar to attend the *Déjeûner* tendered by them to the justices of the Supreme Court of the United States on the 15th instant, and to respond to the toast "The American Lawyer," which you have kindly communicated to me. But a peremptory engagement in court in New York at the very hour in the

forenoon appointed for your banquet, and one in which many other lawyers and parties are engaged, so as to make a postponement out of the question, will make it impossible for me to be in Philadelphia.

I am very sorry, indeed, for this, as I should have delighted in the occasion, and have felt bound to pay my respects to the learned justices whom you are so justly honoring.

Most truly yours,

JOSEPH H. CHOATE.

MR. E. R. HOAR regrets that his state of health will not permit him to go to Philadelphia, and that he shall therefore be unable to accept the courteous invitation of the Philadelphia bar for Thursday next.

CONCORD, MASSACHUSETTS, September 10, 1887.

RUNNYMEDE, WINDSOR, VERMONT, September 12, 1887.

MR. EVARTS regrets extremely that his necessary attendance upon the New York Convention will prevent his being in Philadelphia in season for the *Déjeûner* of the Philadelphia bar tendered to the justices of the Supreme Court of the United States on the 15th instant.

NEW YORK, September 13, 1887.

MR. SAMUEL W. PENNYPACKER.

DEAR SIR,—I beg to acknowledge, with very many thanks, my receipt of the invitation of the Philadelphia bar to a *Déjeûner* tendered to the jus-

tices of the Supreme Court of the United States, Thursday, the 15th of September, at eleven o'clock A.M., at the American Academy of Music, Philadelphia. I deeply regret that my personal and official duties will necessarily preclude my acceptance of the invitation so courteously extended.

I have the honor to remain,

With great respect,

ELBRIDGE T. GERRY.

103 FIFTH AVENUE, October 2, 1887.

SAMUEL W. PENNYPACKER, Esq.

MY DEAR SIR,—I have been travelling about for some weeks, and the kind invitation from the Philadelphia bar to meet the Supreme Court only reached me last evening. I regret exceedingly that my absence deprived me of the pleasure which meeting the court would have given me.

I am ever faithfully yours,

EDWARDS PIERREPONT.



